SUBCOMMITTEE #3:
Health & Human Services

Chair, Senator Mark DeSaulnier

Senator Elaine K. Alquist
Senator Bill Emmerson

March 26, 2012

10:00 AM

Room 4203
(John L. Burton Hearing Room)

Staff: Jennifer Troia

Item	Department
4300	Department of Developmental Services
5170	State Independent Living Council
8885	Commission on State Mandates

PLEASE NOTE:

Only those items contained in this agenda will be discussed at this hearing. Please see the Senate File for dates and times of subsequent hearings. Issues will be discussed in the order as noted in the Agenda unless otherwise directed by the Chair.

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VOTE-ONLY AGENDA

4300 Department of Developmental Services (DDS)

1. Budget Bill Language to Assist with Cash Flow

Budget Issue: DDS proposes budget bill language to increase its authority to borrow from the General Fund (GF) from a limit of $160 million to a limit of $210 million annually. The Department indicates that the change is necessary to keep pace with the dramatic growth in the amount of federal funding supporting its budget (from $29 million in 1988-89 to $1.7 billion in 2011-12). These federal funds are received by the Department as reimbursements and there is a lag between when the services are provided, paid for by Regional Centers, and then reimbursed to the Regional Centers by DDS. Without additional loan authority, the Department indicates that supports provided to over 251,000 Californians with disabilities who are served by Regional Centers may be disrupted because the Regional Centers could be unable to continue paying providers on a timely basis.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the requested budget bill language to increase the authority for DDS's cash flow borrowing.

2. Financial Management Services for Participant-Directed Services

Budget Issue: When a developmental services consumer functions as the managing employer of workers who provide services funded under federal Medicaid Home and Community-Based Services (HCBS) waivers, the federal Centers for Medicare and Medicaid Services (CMS) require that a financial management service (FMS) be offered to assist the consumer (participant) with functions like processing payroll, withholding federal, State, and local taxes, performing fiscal accounting and producing expenditure reports for the participant or family and state authorities. The 2011-12 budget includes $1.8 million ($881,000 GF) to provide FMS for participant-directed services. The proposed 2012-13 budget for these services assumes an increase to $10.7 million ($5.4 million GF) in expenditures for these services.

Reasons for the Increase: The 2011-12 estimates were based on the assumption that the service would cost a flat rate of $95 per month and that only 60 percent of 31,000 monthly vouchers would be managed by an FMS. Subsequently, the Department issued emergency regulations which established a tiered fee from $45 to $95 per month depending on the number of vouchered services utilized by the consumer. The federal Centers for Medicare and Medicaid Services (CMS) also informed the Department that 100 percent participation is mandatory. In addition, the Department found an error in the prior calculation and determined that there will be 175,000 monthly vouchers instead of its prior assumption of 31,000.

Subcommittee Staff Comment & Recommendation: To meet federal requirements, staff recommends that the Subcommittee approve the proposed increase in funding.

3. Capital Outlay Request – Porterville Main Kitchen

Budget Issue: DDS requests, in a capital outlay budget change proposal, authority to reappropriate a total of $25.4 million intended to support the construction of a new 29,000 square foot main kitchen at the Porterville Developmental Center (DC). The Department's authorization to expend those capital outlay funds would otherwise expire on June 30, 2013. The project experienced a delay when a bond sale originally scheduled for December 2010 was cancelled. The sale was later completed in December 2011. The new schedule for construction anticipates that the project will be completed in December 2013.

Subcommittee Staff Comment & Recommendation: Staff recommends approval of the proposed reappropriation of funding for construction of the new main kitchen. This authorization does not alter the anticipated overall cost of the project.

4. Capital Outlay Request – Automatic Fire Sprinkler Systems

Budget Issue: DDS requests, in a capital outlay budget change proposal, $11.4 million GF for construction costs associated with installing automatic fire sprinklers in 14 DC buildings (at the Fairview, Porterville, and Sonoma DCs) that contain nursing and General Acute Care facilities. The project also includes necessary associated work (e.g., asbestos removal, electrical and plumbing renovations). The 2011-12 budget includes $2.0 million GF for preliminary plans and working drawings that informed this new request. According to DDS, the Department of Public health (DPH), which reviews fire/life safety requirements for the federal Centers for Medicare and Medicaid Services, has indicated that it will terminate these facilities' certifications for federal financial participation if compliance is not achieved by August 13, 2013. DDS indicates that approximately $72.3 million annually ($6.0 million each month) in federal funding would be at risk if the project is not completed in time for that deadline.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the requested funds for construction costs associated with installation of automatic fire sprinkler systems.

5170 State Independent Living Council (SILC)

1. Proposed Shift of Federal Aging and Disability Resource Connection Grant Funds

Budget Issue: The budget proposes to shift $149,000 in federal funding for the Aging and Disability Resource Connection program from the 2011-12 to the 2012-13 fiscal year. This represents the amount of unspent funds related to a three-year grant for the expansion of this program given to the SILC by the federal Administration on Aging. The federal government has given its permission for a no-cost extension to allow for expenditure of these remaining funds. No state funds are required because existing in-kind services are used to meet matching requirements.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the shift of federal funds from the 2011-12 to the 2012-13 fiscal year.

DISCUSSION AGENDA

1. Overview of Developmental Services

With proposed 2012-13 funding of $4.7 billion [$2.7 billion General Fund (GF)], the Department of Developmental Services (DDS) administers services for persons with developmental disabilities. The services are provided in the community through 21 Regional Centers and in state-run Developmental Center institutions (DCs). Regional Centers are non-profit organizations that provide diagnosis and assessment of eligibility and help plan, access, coordinate, and monitor consumers' services and supports.

DDS's purpose is to ensure: 1) the optimal health, safety, and well-being of individuals served in the developmental disabilities system, 2) that individuals receive needed services, 2) that services provided by vendors, Regional Centers, and the Developmental Centers are of high quality and are cost-effective, and 4) the availability of a comprehensive array of appropriate services and supports to meet the needs of consumers and their families, as well as 5) to reduce the incidence and severity of developmental disabilities through the provision of appropriate prevention and early intervention services.

Eligibility & Caseload: The developmental services system currently serves approximately 250,000 children and adults who have developmental disabilities. This caseload has grown each year from 2002-03 (when it included 190,000 individuals) to today. To be eligible, an individual must have a disability that began before his or her 18th birthday. The disability must also be: 1) significant, 2) expected to continue indefinitely, and 3) attributable to specified conditions, such as mental retardation,

autism, epilepsy, cerebral palsy, and related conditions. Infants and toddlers (age 0 to 36 months) may also be eligible if they are at risk of having developmental disabilities or if they have a developmental delay. Once they qualify for services under the Lanterman Act, the state provides services and supports to individuals with disabilities throughout their lifetime.

Determination of Services Needed: Services and supports provided for individuals with developmental disabilities range from day programs to transportation or residential care. Determination of which services an individual consumer needs is made through the process of developing an Individualized Program Plan (IPP) (or Individual Family Service Plan if the consumer is an infant/toddler three years of age or younger). The IPP is prepared jointly by an interdisciplinary team consisting of the consumer, parent/guardian/conservator, persons who have important roles in evaluating or assisting the consumer, and representatives from the Regional Center and/or state developmental center. Some differences in available services may occur across communities (i.e., Regional Center catchment areas) to reflect the individual needs of consumers, diversity of the regions, availability and types of services overall, access to "generic" services (i.e., services provided by other public agencies), and other factors. Services that are ultimately included in the consumer's IPP are entitlements.

Residential Placements & Trends: Individuals with developmental disabilities have a number of residential options. Ninety-nine percent of DDS consumers receive community-based services and live with parents or other relatives, in their own houses or apartments, or in group homes (of various models) designed to meet their medical or behavioral needs. The state provides these community-based services to consumers through Regional Centers. The two main components of the budget for community services are Regional Center operations and the purchase of services. Operations costs include costs related to conducting eligibility determinations, assessing consumers' needs, developing IPPs, and providing case management. The purchase of services by Regional Centers occurs if an individual does not have private insurance that covers the service and there is no "generic" or publicly provided service available. In other words, the Regional Center is the payer of last resort.

Another approximately 1,800 individuals served by DDS reside in four state-operated developmental centers (DCs) and one state-operated community facility. Consistent with national trends that support integrated services and reduced reliance on state institutions, California has been reducing its use of DCs as a placement for individuals with developmental disabilities for several decades (with the highest number of DC residents in 1968 and declines nearly every year from 1976 to today, as summarized in the table below through point-in-time data from the years reflected). As a result, several DCs have also been closed by the state. Most recently, the Agnews and Sierra Vista DCs were closed to resident occupancy in 2009. As discussed later in this agenda, DDS is currently in the process of transitioning residents from Lanterman Developmental Center into the community and planning to close that facility. In general, this decreased reliance on DC placements has been accomplished by creating new

community living arrangements and by developing new assessment and individual service planning procedures, as well as quality assurance systems.

State Fiscal Year	Total population in DCs
1968	13,355
1978	9,468
1988	6,763
1998	3,958
2008-09	2,317
2009-10	2,212
2010-11	1,979
2011-12*	1,752
2012-13*	1,533

* Estimated

The decrease in DC placements is also consistent with the United States Supreme Court's 1999 decision in *Olmstead v. L.C., et al*, which stated that services should be provided in community settings when treatment professionals have determined that community placement is appropriate, when the individual does not object to community placement, and when the placement can reasonably be accommodated.

Costs Borne by Consumers and Families: The state provides diagnosis and eligibility assessment services free of charge. Once eligibility is determined, most developmental services and supports are also provided at no charge. However, parents whose incomes for their family sizes place them above the federal poverty level are required to pay a sliding scale share of the cost for 24-hour out-of-home placements for children under age 18. There are also co-payment requirements known as "family cost participation" for selected services, including day care, respite, and camping (which has been partially suspended in recent years), when those services are provided to a child who lives in his or her parent's home and who is not eligible for Medi-Cal. This family cost participation policy is implemented by presuming that the parent will obtain and pay out-of-pocket for a portion of the services that would otherwise have been provided by the state. Finally, in a 2011-12 budget trailer bill, the Legislature and Governor enacted a temporary annual family fee of $150 or $200 for specified families with adjusted gross incomes at or above 400 percent of the federal poverty level. This change was estimated to save $7.2 million annually.

Recent Reductions to the System: Over the three years from 2009-10 to 2011-12, DDS GF spending has remained relatively flat, even while the developmental services caseload has grown. In general, this GF cost containment has occurred because of: 1) increased use of federal and other funding sources, 2) a reduction in the rate of payments to service providers (ranging from three to 4.25 percent), and 3) administrative changes, cost-control measures, and some service reductions. The

savings resulting from these changes in the years they were enacted (several of which also result in ongoing, annual savings) combine to total over $1 billion GF.

Summary of Governor's Budget for 2012-13: The budget proposes total expenditures of $4.7 billion ($2.7 billion GF) for DDS. The table below summarizes this information by program area.

	2011-12	2012-13	Difference
BUDGET SUMMARY (in thousands)			
COMMUNITY SERVICES	$3,800,000	$4,064,000	$225,000
DEVELOPMENTAL CENTERS	569,000	559,000	-9,845
HEADQUARTERS SUPPORT	36,000	39,000	2,873
TOTAL, ALL PROGRAMS	**$4,443,000**	**$4,662,000**	**$218,000**
General Fund	$2,480,000	$2,653,000	$173,000
AVERAGE CASELOAD			
Developmental Centers	1,759	1,533	-226
Regional Centers	249,827	256,059	6,232
AUTHORIZED POSITIONS			
Developmental Centers	5,570.5	5,253.0	-317.5
Headquarters	380.5	380.5	0.0

Subcommittee Staff Comment & Recommendation: This item is included for informational and context-setting purposes. No action is recommended.

Questions for the Administration & LAO:

1) Please briefly summarize the most significant changes in the caseload, residential placements, services, and overall budget for the developmental services system.

2. Governor's Budget for Developmental Centers

The two main sources of developmental center (DC) costs are: 1) personnel, and 2) operating expenses and equipment. There are almost 5,600 staff positions authorized for the developmental centers in 2011-12 and close to 5,300 proposed for 2012-13 (a decrease of 317 staff members or six percent). The average monthly number of residents includes almost 1,800 individuals in 2011-12 and just over 1,500 in 2012-13 (226 fewer residents or a decrease of 12.8 percent).

2011-12 Budget Updates: November estimates for the 2011-12 DC budget include $569 million ($293.4 million GF) in total resources. This includes a decrease of $8.1 million ($3.0 million GF) over the enacted budget. Changes include:

- A net decrease of $5.2 million ($2.6 million GF) due to statewide Control Sections that drove adjustments in retirement and health benefits rates, and personal services cost reductions achieved through collective bargaining or actions of the Administration in employee compensation;
- A decrease of $3.0 million ($2.5 million GF) due to updated Quality Assurance Fees paid by DCs;
- A fund shift from federal funding to $2.2 million more GF due to a two month delay in obtaining federal certification of a portion of the Porterville Secure Treatment Program; and
- An increase of $100,000 GF for miscellaneous adjustments, including cell phone reductions and funding changes.

2012-13 Budget Updates: For 2012-13, the Governor's Budget provides $559.2 million ($283.6 million GF) for DCs. Changes include:

- A decrease of $24.5 million ($14.4 million GF) for Level of Care and Non-Level of Care updated staffing. A portion of the staffing updates are counted towards the Administration's statewide operational efficiencies savings plan [Control Section 3.91(b) reductions];
- A net Increase of $4.5 million ($2.7 million GF) due to statewide Control Sections that drove adjustments in retirement and health benefits rates;
- A decrease of $3.0 million ($2.5 million GF) due to updated Quality Assurance Fees paid by DCs;
- An increase of $2.9 million ($1.6 million GF) to retain 28 authorized positions and five temporary help positions for enhanced Lanterman Closure staffing;
- $2.4 million in reimbursement authority for the State Staff in the Community program; and,

- A decrease of $200,000 GF for miscellaneous reductions, including cell phone reductions, as part of statewide efficiencies and funding changes.

Some of these changes are discussed in greater detail below.

Pending Review of Budgeting Methodology: The 2011-12 budget also included uncodified trailer bill language that requires DDS to reimburse the Office of Statewide Audits and Evaluations (OSAE) within the Department of Finance for a review of the budgeting methodology used to establish the annual budget estimates for DCs. The Legislature asked for this review to be completed in the fall of 2011. The review is under way, but results are not yet available. OSAE staff have indicated that they hope to release a report in early May.

Questions for the Administration & LAO:

1) Please explain why DC expenditures on staffing decline at a lower rate (e.g., six percent in 2012-13) than the decrease in the overall resident population (13 percent in 2012-13).

2a. Update on Closure of Lanterman Developmental Center

Budget Issue: As part of the 2010-11 budget, the Legislature and Governor approved a plan to begin the process of safely transitioning the residents of the Lanterman Developmental Center (Lanterman) to other appropriate living arrangements [as determined by their Individual Program Plans (IPP)] and then closing the facility to resident occupancy. The Governor's 2012-13 budget includes $89.8 million ($46.2 million GF) for the operation of Lanterman, including authority for 941 staff positions. The budget assumes that nearly 180 consumers will leave Lanterman and move into the community in 2011-12 and 2012-13. As the number of consumers living at Lanterman declines, the average cost per resident increases, at least in part because some operating costs for the facilities are fixed.

Of the funds budgeted for Lanterman staff, $2.9 million ($1.6 million GF) are proposed to allow for the retention of 28 authorized positions and five temporary help positions that would otherwise be eliminated under budgeting formulas which factor the facility's resident population into the number of authorized positions. DDS indicates that this enhanced staffing is needed because of additional workload caused by the closure process and in order to prevent the remaining residents from needing to move in order for them to reside in units or buildings where the remaining staff are assigned. The retained position authority would include 10 nursing positions, nine administration transition staff to coordinate among Regional Centers, community providers, and Lanterman employees, eight staff to provide other supports identified as necessary for residents, and one staff member to coordinate the State Staff in the Community program. The retained temporary help positions would include five occupational, physical, or speech therapy positions at a cost of $746,200 ($408,444 GF). These

positions are funded under the Department's temporary help blanket authority (and do not include specific position authority).

Finally, the budget includes $2.4 million in reimbursement authority for the State Staff in the Community program associated with Lanterman closure. This program authorizes DDS employees working at Lanterman to work in the community with former residents while remaining state employees for up to two years following the transition of the last resident out of Lanterman. No Lanterman staff are currently working in the community under this program.

Background on Closure Process for Lanterman DC: According to DDS, the transition of each Lanterman resident to other appropriate living arrangements will occur only after necessary services and supports identified in the IPP process are available elsewhere. The closure process is thus focused on assessing those needs and developing community resources to meet them. The Department and 12 Regional Centers that are involved in the closure process use the Community Placement Plan as one tool to help them accomplish those goals. DDS has also received recommendations from three advisory groups that include a Resident Transition Advisory Group, Quality Management Advisory Group, and Staff Support Advisory Group. The Department indicates that its staff meet regularly with parents and family members of Lanterman residents, Lanterman employees, and the involved Regional Centers as well. The Administration has declined to give a target date for closure of the facility as the development of these necessary community resources to ensure a safe and successful transition for each consumer is a continual and complex process.

The 2010-11 budget also included trailer bill language (in SB 853, Chapter 717, Statutes of 2010) to authorize the use of Adult Residential Facilities for Persons with Special Health Care Needs as residential placements for individuals transitioning out of Lanterman, the use of managed health care for those individuals, implementation of an outpatient clinic to provide health and dental services, and the ability to rely on staff working at Lanterman to provide services in the community to former residents of Lanterman. The Adult Residential Facilities for Persons with Special Health Care Needs [commonly called "SB 962 homes" after the legislation that originally authorized them as a part of the plan for closing the Agnews DC (SB 962, Chapter 558, Statutes of 2005)] are designed to serve individuals who have stable but intensive health care needs such that they require the availability of 24-hour licensed nursing staff.

Transitions to Date: In January 2010, when the Department proposed to begin working toward the closure of Lanterman, there were around 400 residents and 1,300 employees at the facility. Currently, there are 277 residents. In that time, eighty-four residents have transitioned from Lanterman to the community, with the largest number (72) moving to Adult Residential Facilities licensed by DSS. As of December 1, 2011, there were just over 1,000 employees at Lanterman. Fifty percent of them are direct care nursing staff, nine percent are Level-of-Care professional staff (e.g., physicians, social workers, teachers), and the remaining 41 percent are Non-Level-of-Care and administrative staff. Twenty-seven percent of the remaining staff have worked at

Lanterman for 20 years or longer, while 38 percent have worked there between 11 and 20 years, and the remaining 35 percent have worked there for 10 or fewer years.

Some Characteristics of Lanterman and Its Residents: There are three levels of care provided in Lanterman facilities: an Acute Care Hospital (for short-term stays with an average of just one resident per day and an average length of stay of 12 days), a nursing facility (where 29 percent of residents live), and an Intermediate Care Facility (where 71 percent of residents live). The majority of consumers residing at Lanterman (59 percent) have lived there for more than 30 years. Only five percent have lived there for less than five years. Six percent of residents are aged 65 or older, 72 percent are between 40 and 65 years old, 19 percent are between 21 and 40 years old, and three percent are between 18 and 21 years old. Seventy-six percent have profound intellectual disabilities and 13 percent have severe intellectual disabilities. The majority of residents have additional disabilities, including 51 percent with epilepsy, 16 percent with autism, and 12 percent with cerebral palsy. Sixty-two percent have also been diagnosed to have a mental illness.

The 84 former residents of Lanterman who have transitioned to the community so far have similar lengths of stay at Lanterman, ages, and disabilities as the overall residential population. Of note, however, more of the individuals who have moved thus far have significant behavioral issues as their primary service need than the overall population of Lanterman residents (42 percent of those who have moved as compared to 19 percent of the overall residential population). Fewer of the individuals who have moved have significant health needs as their primary service need (9 percent as compared with 27 percent). The Department indicates that this is due at least in part to the pace of development of specialized homes (i.e. SB 962 homes) that are equipped to handle these particular health needs.

Subcommittee Staff Comment & Recommendation: Staff recommends holding open the requested funding to support 33 positions (28 with requested position authority and 5 budgeted separately under temporary help blanket authorization) for enhanced staffing at Lanterman DC.

Questions for the Administration & LAO:

1) Please briefly summarize the status of the transition of residents from Lanterman to the community. How does the progress so far compare to the Department's initial expectations with respect to timing?

2) What challenges have the Department and Regional Centers faced during the transition process to date? How have those challenges been addressed? What other challenges does the Department anticipate in the future?

3) Please describe why enhanced staffing and these particular positions are needed at this point.

2b. New Admissions to Developmental Centers and Alternative Residential Options in the Community

Budget Issue: As discussed on pages 7 and 8 of this document, there is an overall trend of decreased reliance on DCs as residential placements for individuals with developmental disabilities. At the same time, there are still 1,500 to 1,800 individuals residing in developmental centers and a number of new admissions to DCs each year. In 2009-10, 126 consumers were admitted to DCs (even while in the aggregate the number of DC residents decreased because of others moving out). In 2010-11, 108 consumers were admitted to DCs. While all DCs have admitted consumers in the last five years, the largest number of these admissions was to the DC in Porterville (including 99 of the 2009-10 admissions and 85 in 2010-11).

Background on Porterville DC: The Porterville DC is unique in that it houses a secure treatment facility as well as a transition treatment program and serves up to 230 residents with developmental disabilities who have been judicially committed to a developmental center because of their behavior in the community and involvement with the criminal justice system. A limit of 230 residents at Porterville was enacted in trailer bill as part of the 2011-12 budget. Prior to that change, there was a cap of 297 residents. Although many of the individuals who reside at Porterville are Medi-Cal eligible, the state does not currently receive federal Medicaid funding for the Secure Treatment Program because this portion of the facility has not been certified by the federal Centers for Medicare and Medicaid Services. The 2011-12 budget assumed savings of $13 million GF from obtaining this certification so that federal funds can be used for the care of some residents in the secure treatment population at Porterville. The Governor's 2012-13 budget assumes an erosion of $2.2 million GF of these savings due to delays in the certification process.

Some Characteristics of Recent Admittees to DCs: In general, the vast majority of individuals admitted to DCs in recent years have co-occuring intellectual disabilities, behavioral issues, and/or psychiatric disorders. More specifically, 65 percent of the individuals assessed to need and/or admitted to a DC between July 2008 and December 2011 were diagnosed to have a mild intellectual disability, with most of the remaining individuals identified as having intellectual disabilities ranging from moderate (11 percent) to severe (four percent) or profound (three percent). The majority (56 percent) were also diagnosed with a psychiatric disorder. Ninety-seven percent had identified behavioral issues that included serious assaultive behavior (observed in the cases of 44 percent of these individuals), vandalism or property destruction (34 percent), maladaptive sexual behavior (29 percent), habitual theft (19 percent), and attempted suicide in recent years (13 percent). Additionally, 20 percent of these consumers had experienced challenges with drug and alcohol abuse and 17 percent experienced abuse or neglect as a child.

Alternative Residential Options in the Community: Consumers of DDS services who do not live with their parents or other relatives, in their own houses or apartments (sometimes with supported living services), or in group homes may reside in a number

of facilities besides DCs, including intermediate care facilities, acute or sub-acute care facilities, or skilled nursing homes.

Consumers who have moved from the Agnews or Lanterman DCs into the community may also reside in homes that were specifically created in order to fill voids in the spectrum of available housing options. Between July 1, 2004 and March 27, 2009, a total of 327 Agnews residents transitioned to living arrangements in the community and 20 residents transferred to other DCs. The Bay Area Housing Plan enabled the involved Regional Centers to acquire and control an inventory of stable and permanent homes in the community for use by these former Agnews residents. The array of housing options under the Plan include family teaching homes and specialized residential homes licensed by the Department of Social Services which are designed to serve consumers with behavioral challenges or intensive health care needs. According to DDS, the average costs borne by Regional Centers for individuals who moved out of Agnews and into specialized residential homes is just over $232,000 annually.[1] Some advocates have suggested that an increased use of these and other community-based options could further reduce the state's reliance on DCs (potentially including its reliance on Porterville to meet forensic treatment needs).

SB 962 Homes: One set of specialized homes created during the Agnews closure process is called "Adult Residential Facilities for Persons with Special Health Care Needs" (commonly referred to as "SB 962" homes). SB 962 homes were established as a pilot project to be implemented at first only for regional centers involved in the closure of the Agnews DC. Given the success of the pilot project, in 2010-11 budget trailer bill, the Legislature and Governor extended the use of these homes to Regional Centers involved in the closure of the Lanterman DC. SB 962 homes provide 24-hour special health care and intensive support services in a home setting that is licensed to serve up to five adults with developmental disabilities. The kinds of special health care needs that are included are nursing supports for feeding and hydration, such as total parenteral feeding and gastrostomy feeding, cardiorespiratory monitoring, tracheostomy care and suctioning, special medication regimes including injection and intravenous medications and other specified services. Intensive support services are defined as when an individual needs physical assistance in performing four or more activities of daily living that include eating, dressing, bathing, toileting, and continence. A licensed nurse or psychiatric technician is required to be awake and on duty 24-hours a day, 7 days per week.

An evaluation published by the University of California, Davis Extension's Center for Human Services in 2010[2] found that SB 962 homes were cost effective when compared with the costs of placement in a DC (saving around $41,000 per individual consumer per year). The evaluators also found that consumers living in SB 962 homes were

[1] These facilities receive variable payments based on rate structures determined by DDS staff, Regional Centers, and Service Providers. It is also possible that there are additional service costs for some of these individuals borne by other state agencies or departments that may not have been previously available to them in DCs.

[2] Available online at this address: https://dds.ca.gov/LivingArrang/docs/962FinalReport.pdf

receiving high quality care and had good access to health care. Further, the report indicated that the SB 962 model contributed in meaningful ways to consumers' health, quality of life, level of functioning, and overall happiness.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee direct the Department to continue working with stakeholders to identify and build upon ways that the state can safely and appropriately reduce its reliance on and new admissions to DCs. As one component of this ongoing work, staff recommends that the Subcommittee adopt placeholder trailer bill language to expand the geographic availability of SB 962 homes statewide.

Questions for the Administration & LAO:

1) Please describe the options available in the community for individuals with complex needs who reside in developmental centers today. How do specialized residential facilities, including SB 962 homes, fit into the continuum of options needed?

2) Please describe the recent trends in developmental center admissions. What changes or reforms might the Administration and Legislature explore in order to strengthen the services available for meeting the needs of individuals with forensic treatment needs?

3. Governor's Budget for Community Services

2011-12 Updates: The state provides community-based services to DDS consumers through 21 nonprofit corporations called Regional Centers. The Governor's budget includes a total of $3.8 billion ($2.2 billion GF) for the provision of these services and supports to approximately 250,000 individuals with developmental disabilities in 2011-12 [a decrease of $146.1 million ($126.4 million GF) from the enacted budget for the current year]. Major changes include:

- A $100 million GF decrease for the second six months of the budget year that was triggered by lower than previously anticipated revenues in December 2011 (with potentially corresponding federal fund decreases dependent on the specific changes made).[3]

- A $47 million decrease ($32.0 million GF) to reflect revised implementation dates of Medi-Cal caps and co-pays and the establishment of an alternative Medi-Cal funded program to replace the Adult Day Health Care (ADHC) program, referred to as Community-Based Adult Services (CBAS), which reduce the impact on the DDS budget.

- A $5.9 million GF increase based on updated operations costs, caseload, utilization, and reimbursement data.

2012-13 Budget Proposal: The Governor's budget for 2012-13 proposes a total of $4.1 billion ($2.4 billion GF) for community-based supports and services, or an increase of $225.4 million ($180.9 million GF) over the revised 2011-12 budget, to serve 256,000 (or 2.5 percent more) consumers. Changes include:

- A $200 million GF decrease reflecting the full-year, ongoing impact of the reduction that was triggered by lower than previously anticipated revenues in December 2011 (with potentially corresponding federal fund decreases dependent on the specific changes made).

- A $162.7 million increase ($115.2 million GF) in regional center Operations and Purchase of Services due to updated caseload and utilization change.

- A $158.2 million increase ($108.4 million GF) to reflect restoration of the 4.25 percent payment reduction for regional center operations and service providers scheduled to sunset June 30, 2012.

[3]Currently, the 2011-12 and 2012-13 reductions of $100 million and $200 million GF, respectively, are reflected in the community services budgets for those years. The final reductions may, however, be taken from any mix of the budgets for community services, developmental centers, and/or DDS headquarters.

- An increase of $50.0 million GF to support developmental services provided to children from birth to age five.

- An $18.9 million decrease ($2.8 million GF) to reflect revised implementation dates of Medi-Cal caps and co-pays and the establishment of an alternative Medi-Cal funded program to replace the Adult Day Health Care (ADHC) program, referred to as Community-Based Adult Services (CBAS), which reduces the impact on the DDS budget.

- A $9.0 million increase ($4.5 million GF) to reflect updated assumptions related to rates for financial management services to account for tiered rates and 100 percent of consumers using the participant-directed option for certain services. In addition, community-based training services were added.

- A $31.1 million decrease ($20.5 million GF) to reflect full-year implementation of the savings proposals adopted in the FY 2011-12 enacted budget.

A few of these changes are discussed in greater detail below.

3a. Expiration of the 4.25 Percent Payment Reduction

Budget Issue: In each of the last several years, the Legislature and Governor have enacted temporary reductions to Regional Center Operations and Purchase of Services funding in order to save General Fund resources. In 2008-09 and 2009-10, the reduction was three percent (for estimated savings in 2009-10 of $60 million GF). In 2010-11, the reduction was increased to 4.25 percent (for estimated savings of $86 million GF). In 2011-12, the 4.25 percent reduction was continued until July 1, 2012 (for estimated savings of $105.6 million GF). There were corresponding federal funding losses each year. The Governor's budget for 2012-13 does not propose to extend these rate reductions. As a result, $158.2 million ($108.4 million GF) is restored to DDS's proposed budget.

The statutory provisions creating the payment reductions also established some exemptions to the reduction, including exemptions for supported employment, the State Supplementary Payment (SSP) supplement for independent living, and services with "usual and customary" rates established in regulations. Other exemptions were allowed if a Regional Center demonstrated that a non-reduced payment was necessary to protect the health and safety of a consumer and DDS agreed.

Many stakeholders have indicated that these rate reductions (particularly when combined with other reductions to the developmental services system) have created significant hardships for Regional Center staff and community-based service providers, which have also resulted in negative impacts on consumers.

Subcommittee Staff Comment & Recommendation: Staff recommends holding open the restoration of funding tied to expiration of the 4.25 percent rate reduction, pending further discussion related to reductions triggered by less than anticipated revenue in 2011-12.

Questions for the Administration and LAO:

1) What have the impacts of the 4.25 percent reduction been – on Regional Centers, service providers, and DDS consumers? What, if any, information has the Department tracked that might help to identify these impacts?

3b. First 5 Funding for Services Provided to Children from Birth to Five Years Old

Budget Issue: In 2009-10, Governor Schwarzenegger vetoed $50 million GF from the budget for developmental services provided to children from birth to age five who have, or are at risk for, developmental delays or disabilities. The California Children and Families Commission (created by Proposition 10 in 1998 and commonly known as the First 5 Commission) then provided $50 million to prevent the loss of services that would otherwise have resulted. The Legislature assumed the continuation of this First 5 funding in the final enacted budgets for 2010-11 and 2011-12.[4] The 2012-13 budget no longer assumes that these First 5 funds will be made available by the Commission and instead includes $50 million GF for these services.

Background on Early Intervention Services Provided to Young Children: Families whose infants or toddlers have certain documented developmental delays or disabilities, or are at risk for developmental delays or disabilities, may qualify for developmental monitoring or early intervention services. Based on the child's assessed needs and the families concerns and priorities (as determined by each child's Individualized Family Service Plan (IFSP) team), early intervention services may include supports such as assistive technology, nursing services, and occupational or physical therapy.

Background on Proposition 10: The Proposition 10 initiative created the California Children and Families Commissions, which rely on revenues generated by state excise taxes on cigarettes and other tobacco products to fund early childhood development

[4] In March 2011, the Legislature passed and the Governor signed AB 99 (Chapter 4, Statutes of 2011), a budget trailer bill which established the Children and Families Health and Human Services Fund and required specified amounts of state and local First 5 funds to be deposited in the fund for the 2011-12 fiscal year. Under this legislation, those funds would have been used to provide health and human services, including direct health care services, to children from birth through five years of age. In response, several local commissions filed a lawsuit to prevent AB 99 from taking effect. A superior court subsequently granted their request and declared AB 99 invalid. The final 2011-12 budget enacted in June 2011 did not rely on the provisions of AB 99, but did continue the assumption made in prior years that the First 5 Commissions would provide $50 million for the continued provision of services to young children that they had funded in 2009-10 and 2010-11.

programs for children up to age five. The state commission (which receives 20 percent of revenues) and county commissions (which receive the remaining 80 percent) operate First 5 programs. In general, these programs fund early childhood development, health, and education services that were designed to be enhancements to previously existing core programs. With the state facing such large deficits in recent years, however, many core programs have been or are proposed to be subject to major reductions or elimination.

Subcommittee Staff Comment & Recommendation: Staff recommends holding this item open, pending further discussions with the Administration and First 5 regarding the potential for continued support by the Commission.

Questions for the Administration & LAO:

1) Please describe the services that First 5 funds have supported since 2009-10.

4. 2011-12 Trigger Reduction

Budget Issue: The 2011-12 budget included trigger provisions that gave the Department of Finance authority to make specified reductions of up to $2.5 billion GF if revenues in the first half of the fiscal year were lower than previously anticipated. Among the trigger provisions that ultimately took effect was a reduction of $100 million GF in funding for developmental services.

The authorizing trailer bill (SB 73, Chapter 34, Statutes of 2011) directed the Department to consider a variety of strategies including savings attributable to caseload and expenditure adjustments, unexpended contract funds, or other administrative savings to meet the target "with the intent of keeping reductions as far away as feasible from consumer's direct needs, services, and supports, including health, safety, and quality of life." SB 73 indicated that the Department could utilize input from broad-based workgroups to develop proposals as necessary. The trailer bill also required that "any savings or reductions identified shall be reported to the Joint Legislative Budget Committee within 10 days of the reduction as directed within Section 3.94 of the Budget Act of 2011."

The Administration indicated in December that the Department expected, on a one-time basis, to achieve the $100 million GF savings within the administrative categories of savings outlined in SB 73 (without the need to propose service reductions or other policy changes that would require statutory changes). At the time, the Administration did not provide specific details on how the reduction would be achieved. Since December, the Administration has provided general information on how some of the reduction might be achieved, but without specific detail or written documentation. The Department indicates that its representatives will be prepared to testify in greater detail during this hearing.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee direct the Administration to provide additional detail, in writing and by April 6, 2012, regarding the reductions expected to comprise the $100 million GF in savings for 2011-12.

Questions for the Administration & LAO:

1) How does the Department plan to achieve the $100 million GF reduction in 2011-12?

5. 2012-13 Trigger Reduction

Budget Issue: The Governor's budget for 2012-13 assumes a reduction of $200 million GF for developmental services that was triggered by lower than anticipated revenue in the first half of 2011-12. The increase in the total amount is reflective of a full-year, ongoing impact (whereas the $100 million GF savings the Department was expected to achieve in 2011-12 occurred with only six months of the year remaining). The Department convened a series of meetings early in 2012 to obtain input from a broad group of stakeholders regarding how to achieve these savings, but indicates that its proposals are not likely to be submitted to the Legislature before the May Revision of the Governor's budget.

Possible Options for Achieving Savings: The Department and stakeholders have raised a variety of possible options to explore, including but not limited to:

1) **Recent legislation:** SB 946 (Steinberg, Chapter 650, Statutes of 2011) requires specified health care service plan contracts and policies to provide coverage for behavioral health treatment for pervasive developmental disorder or autism from July 1, 2012 until July 1, 2014. DDS estimates that these provisions will result in $64 to $69 million GF savings in the state's costs for developmental services in 2012-13. Those savings are not yet accounted for in the Governor's budget for DDS. SB 946 also creates a task force to develop longer-term recommendations related to behavioral health treatment and requires the Department of Managed Health Care, in conjunction with the Department of Insurance, to submit a report from the task force to the Governor and Legislature by December 31, 2012.

2) **Reducing developmental center placements and admissions:** See discussion beginning on page 14.

3) **Uses of technology:** Ideas that have been mentioned include potential uses of telephone or video-conferencing rather than in-person communications.

4) **Enhanced federal funding:** The state has recently submitted an amendment to its federal Medicaid state plan (for the Medi-Cal program in California) that seeks to opt into a new waiver program called the Community First Choice Option (CFCO). This waiver option was created in Section 1915(k) of the federal Social Security Act as a part of federal health care reform (enacted in the Affordable Care Act). Programs operated under the CFCO waiver receive an enhanced federal funding match of 56 percent (six percent over the base matching rate of 50 percent) for the provision of Home and Community-Based Attendant Services and Supports. The plan amendment submitted by the Department of Health Care Services, in collaboration with the Department of Social Services, currently covers personal care and related services that would be provided under the state's In-Home Supportive Services (IHSS) program. To the extent that the state provides similar kinds of personal care services as a component of other programs budgeted under DDS, one question to explore is whether those services could also be provided under the state's planned implementation of the CFCO waiver. Another set of questions has been raised about whether the state could increase the number of consumers served under other Medicaid Home and Community-Based Services waivers.

5) **Continuation of some or all of the 4.25 percent rate reduction:** See discussion beginning on page 18.

6) **Service flexibilities:** Some stakeholders have expressed an interest in creating self-directed service options or other systemic flexibilities that might create a greater degree of choice for consumers and/or provide relief to providers while reducing programmatic inefficiencies.

Subcommittee Staff Comment & Recommendations: First, staff recommends that the Subcommittee hold this item open pending the receipt of proposals from the Administration and additional input from stakeholders.

Second, staff recommends that the Subcommittee direct the Administration to work across health and human services departments (including the Departments of Health Care Services, Social Services, and Developmental Services, as necessary) to identify whether there are developmental services that could be funded under the CFCO waiver, and to provide an update to the Subcommittee on its efforts to do so by the end of April.

Finally, to allow for adequate time to review and respond to forthcoming proposals, staff recommends that the Subcommittee encourage the Department and Administration to work toward submitting proposals for how to achieve this $200 million reduction to the Legislature and to stakeholders by May 1, 2012.

Questions for the Administration & LAO:

1) Please describe the stakeholder process the Department has engaged in to date and the general kinds of ideas the Administration has been exploring in order to achieve this reduction.

2) What are the next steps toward developing and presenting specific proposals? What is the anticipated timing of these next steps?

6. Governor's Budget for DDS Headquarters

Overview of DDS Headquarters' Budget: The budget proposes a total of $38.5 million ($24.5 million GF) in funding for the DDS Headquarters in Sacramento. This represents approximately one percent of the proposed budget for developmental services.

Proposed Changes to the 2011-12 Budget: The Governor's Budget updates the FY 2011-12 funding for headquarters operations to $35.6 million ($23 million GF), a decrease of $3.0 million ($1.6 million GF) compared to the FY 201112 enacted budget. Changes include:

- A net decrease of $2.8 million ($1.5 million GF) due to statewide Control Sections that drove adjustments in retirement and health benefits rates, personal services cost reductions achieved through collective bargaining or actions of the Administration related to employee compensation, and one time savings as part of the Administration's statewide operational efficiencies savings plan [Control Section 3.91(b)]; and,

- A decrease of $100,000 GF due to statewide efficiencies that resulted in decreased building lease and cell phone costs.

Proposed Budget for 2012-13: The Governor's Budget proposes headquarters operations funding in 2012-13 of $38.6 million ($24.6 million GF), a decrease of $100,000 GF compared to the 2011-12 enacted budget. Changes include:

- A net decrease of $300,000 ($200,000 GF) due to statewide Control Sections that drove adjustments in retirement and health benefits rates;

- A decrease of $100,000 ($11,000 GF) due to elimination of one-time operating expenses to shift Limited-Term positions to Permanent positions; and,

- A net increase of $300,000 ($100,000 GF) for miscellaneous adjustments including a technical budget adjustment to move costs for DOJ Legal Services from the budget for Developmental Centers to the budget for Headquarters and cell phone reductions for administrative efficiencies.

6a. Request to Extend and Make Permanent 5 Limited-Term Positions Related to Federal Funding

Budget Issue: The Governor's budget includes $409,000 ($217,000 GF) to establish 4.0 permanent positions and 1.0 two-year, limited-term position that were previously approved as two-year, limited-term positions. The positions (one Career Executive Assignment, two Community Program Specialist IIs, one Senior Accounting Officer Specialist, and one Accounting Officer Specialist) are intended to support the Department's efforts to collect, account for, and maintain federal financial participation in the state's provision of developmental services. Due to a recent hiring freeze, the Department has experienced delays in filling the budgeted positions. Two are filled and three are in varying stages of the hiring process.

Rationale Behind the Request: The Department indicates that since the 1988-89 fiscal year, federal funding for developmental services (budgeted under the Department as Local Assistance/reimbursement funds) has risen from $29 million to $1.7 billion today. Since 2009-10 in particular, the Department has significantly increased its workload related to federal funding as additional federal funding has been used to create GF savings.

Subcommittee Staff Comment & Recommendation: Staff recommends that the Subcommittee approve the requested funding and position authority.

Questions for the Administration & LAO:

1) Please summarize the need for these positions and the consequences to the state and the Department if they are not authorized.

8885 Commission on State Mandates

1. Proposed Repeal of Mandate Related to Counsel in Conservatorship Proceedings

Budget Issue: Under existing law, courts are required to appoint the public defender or private counsel to represent the interests of conservatees, proposed conservatees, or individuals alleged to lack legal capacity in specified legal proceedings if: a) they are unable to retain legal counsel and request appointment of counsel, b) the court determines that the appointment of counsel would be helpful or is necessary to protect the individual's interests, or c) the proceeding is about the establishment of a limited conservatorship. The court is then required to set a reasonable sum for compensating counsel and to determine whether the person can pay some or all of that amount (including payment out of the proceeds of community property at issue in the proceeding, if applicable). When the person lacks the ability to pay counsel, the county is required to do so.

The Administration proposes trailer bill language to repeal these requirements, which it indicates have been suspended since 2009. According to the Administration, these requirements are now standard operating procedures, and the mandate for local jurisdictions to meet them is no longer necessary. If the mandate is not suspended or repealed, the Department of Finance indicates that the state would incur costs of $349,000 GF.

Subcommittee Staff Comment & Recommendation: Staff recommends holding this issue open.

Questions for the Administration and LAO:

1) Please explain which aspects of the statutes proposed for repeal create the mandate(s) at issue.

2) How often are courts appointing counsel that is paid for by counties pursuant to these provisions? What, if any, changes in local practice have occurred since the suspension of these statutes in 2009?

3) If these statutes are repealed as proposed, would conservatees, proposed conservatees, or individuals alleged to lack legal capacity continue to be entitled to the appointment of counsel under the circumstances specified in these statutes?